BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DONALD LAUGHLIN, Claimant, v. STATE OF IDAHO INDUSTRIAL SPECIAL INDEMNITY FUND, Defendant.	**IC 2006-000620** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** **Filed August 18, 2014**

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on December 3, 2013. Claimant was present and represented by Sam Johnson of Boise. Paul J. Augustine, also of Boise, represented State of Idaho, Industrial Special Indemnity Fund (ISIF).[1] Oral and documentary evidence was presented and the matter remained open for the taking of three post-hearing depositions. The parties then submitted post-hearing briefs and this matter came under advisement on April 16, 2016.

ISSUES

The issues to be decided as the result of the hearing are:

1. Whether Claimant is totally and permanently disabled, and, if so
2. Whether ISIF is liable, and, if so
3. Apportionment under the *Carey* formula.

[1] Self-insured Employer settled with Claimant prior to hearing.

CONTENTIONS OF THE PARTIES

Claimant contends that he is totally and permanently disabled as a result of a right shoulder injury combined with a pre-existing above-the-elbow left arm amputation and non-medical factors. The restrictions stemming from Claimant's right shoulder condition are such that Claimant is unemployable and, according to Claimant's vocational expert, it would be futile for him to search for work.

ISIF counters that two of three doctors involved in Claimant's care have assigned no restrictions in the use of his right shoulder and the restrictions given by an IME doctor are not for any condition(s) caused by his industrial accident but for pre-existing arthritis. Further, ISIF's vocational expert has found jobs Claimant could perform and have been approved by Claimant's treating physician and an IME physician. Claimant actually returned to light duty at Albertsons but was terminated for "job abandonment." Finally, Claimant is making more money currently on SSI than he was before his accident, which brings his motivation to find and keep work into question.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at the hearing.

2. Joint Exhibits (JE) 1-22 admitted at the hearing.

3. The post-hearing deposition of Terry Montague, M.A., taken by Claimant on December 19, 2013.

4. The post-hearing deposition of Jeffrey G. Hessing, M.D., taken by ISIF on January 16, 2014.

5. The post-hearing deposition of William C. Jordan, C.D.M.S., taken by ISIF on January 24, 2014.

All objections made during the course of taking the above-referenced depositions are overruled.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was 42 years of age and resided in Caldwell at the time of the hearing. He graduated from high school in California in 1990 with average grades. He also has his GED. Prior to entering the Air Force in 1992, Claimant performed what he described as "remedial jobs." Claimant served in Japan for about a year as an aircraft mechanic and as a crew chief on a C130, a transport aircraft. Claimant left the Air Force in 1993. "I got in a fight. Somebody grabbed my crotch and I hit him more than once. They gave me an option and I decided to leave." HT, p. 15.

2. After the Air Force, Claimant returned to California and worked "odd jobs" such as in a pizza place, in aircraft maintenance, lawn care, and in a glass factory.

3. In 1997, while in Arizona, "I was drinking and driving and I was going the wrong way on the freeway with my arm hanging out the window. I collided with another vehicle." HT, p. 17. This accident resulted in a left arm amputation slightly above the elbow. After a three-month convalescence, Claimant returned to California and eventually came to Idaho.

4. Before beginning employment with Albertsons in 2005, Claimant operated his own car detailing business in Emmett for a short time. He also worked on equipment at a rental yard in Middleton (he was fired for not being able to do his job with only one arm), assembled bicycles for Toys 'R Us during the Christmas season, customer service and sales at Sears for a short duration, managed a department at D&B Supply answering questions and carrying out items for customers (his only significant employment since leaving the Air Force), carried out items for customers for Ace Hardware for a short time, and briefly at Lowe's and Wal-Mart stocking shelves.

5. In May 2005, Claimant was found eligible for the services of the Idaho Department of Vocational Rehabilitation (IDVR). His vocational goal was to become a real estate appraiser. Claimant was referred to Michael Johnston, Ph.D., for a psychological evaluation by ICRD. Dr. Johnston diagnosed PTSD, bipolar disorder, episodic alcohol abuse, and obsessive/compulsive disorder. "In regards to vocational placement, the patient would function best in a structured environment with clear expectations and consequences. Issues may be minimized in independent work with limited peer or public contact." JE 21, p. 6.

6. IDVR closed Claimant's file in 2005 for his failure to cooperate with the program.

7. In September 2005, Claimant began his employment with Albertsons as a night stocker. He was responsible for unloading freight pallets and stocking the contents on shelves within the store. His job was made more difficult due to his left arm amputation but he was able to perform the essential functions required.[2]

[2] Claimant was fitted for a prosthetic arm while in Arizona but he testified that he seldom wore it because it was uncomfortable and only had a "hook" rather than more functional attachments.

8. On January 6, 2006, Claimant was lifting an empty pallet to place on top of other empty pallets when he felt a sharp pain in his right shoulder causing him to drop the pallet. He immediately informed the night manager of his accident and injury. Claimant's wife picked him up and took him to a local ER where he eventually came under the care of orthopedic surgeon Roman Schwartsman, M.D.

9. Dr. Schwartsman brought Claimant to surgery on February 13, 2006. Dr. Schwartsman recorded the following history:

> This is a 34-year-old who underwent right shoulder arthroscopy with subacromial decompression. The labrum was noted to be well anchored at the time of the arthroscopy contrary to the MRI report. There was no interposition of labral tissue into the joint space as stated on the MRI. There was some fraying of the interior labrum, which may have been mistaken for that. The partial thickness cuff tear was also debrided and a subacromial decompression was done. JE 2, p. 4.

Claimant was referred to physical therapy (Claimant failed to attend) and excused from work for two weeks.

10. Dr. Schwartsman released Claimant to restricted work on March 2, 2006. He returned to light duty for about a month at Albertsons in customer service renting movies, selling cigarettes and lottery tickets, etc. Claimant testified that he liked this position but had trouble counting change one-handed and people complained; however, there is no evidence that Albertsons ever disciplined him over that issue.

11. Claimant testified that he was terminated from Albertsons because they could not find any more light duty work for him. However, Albertsons' records indicate Claimant was terminated for abandonment of job by failing to show up for work and for not phoning in regarding his absences. See JE 11, p. 1.

12. Subsequent to Claimant's termination at Albertsons, he was convicted of a felony DUI and sentenced to a six-month "rider" at Cottonwood. He was released on probation in January 2007.

13. Claimant engaged in a job search from March to November 2007. He enlisted the services of ICRD upon referral by his then-attorney in January 2008. By that time, he had been released to return to work without restrictions or impairment by Dr. Schwartsman. Claimant informed ICRD that he was having problems with transportation and day-care.[3] On April 16, 2008, ICRD closed its file: "I am closing this file because I have not been able to make an impact regarding Claimant's employability." JE 18, p. 5.

14. In February 2008, Claimant reopened his file at IDVR. Claimant had an old and useless prosthetic arm so IDVR ordered him a new one that would fit attachments, enabling Claimant to perform fine-gripping and allow him to (hopefully) work as a mechanic. However, the prosthetic was only equipped with a hook and the attachments would not be ordered until Claimant identified employment (he never did). Claimant testified that he rarely used the prosthetic because it had to be strapped over his right shoulder which caused him pain. However, he testified that no physician ever told him not to use the arm.

15. In July 2009, Claimant informed IDVR that he was receiving SSI benefits, could not use the prosthetic arm (but would not return it to IDVR) and could not work. In August 2009, Claimant's retained vocational counselor Terry Montague requested that IDVR "resume the rehab process." JE 19, p. 97.

[3] Claimant testified at hearing that he currently had reliable transportation and his children were now in school.

IMEs and restrictions

Joseph G. Daines, M.D.

16. Dr. Daines, a local orthopedic surgeon, performed an IME at Surety's request on May 14, 2007. After following IME protocols, Dr. Daines concluded that Claimant had incurred a 6% right upper extremity PPI without apportionment. Claimant has been at MMI since May 18, 2006 (per Dr. Schwartsman's prediction). He restricted Claimant from overhead or repetitive lifting, and lifting or carrying more than 30 pounds. On February 10, 2010, after examining Claimant and reviewing pre- and post-surgery MRIs, Dr. Daines increased his lifting restrictions: "He should avoid overhead work, or work that requires lifting more than 20 pounds with the right upper extremity in all but limited basis." JE 1, p. 13. While Dr. Daines' records do not specifically relate the restrictions or impairment to conditions caused by Claimant's industrial accident, for purposes of this proposed decision, the Referee will assume Dr. Daines intended to relate the same to the accident.

17. On August 4, 2009, Dr. Schwartsman indicated that he agreed with Dr. Daines' 6% upper extremity PPI but, "Based on finding [sic] seen at the time of surgery and subsequent postoperative exam, I do not see any basis for signing [sic] permanent restrictions for this patient." JE 2, p. 12.

John Smith, M.D.

18. Claimant began seeing Dr. Smith, an orthopedic surgeon, for persistent right shoulder pain in March 2009. In September 2009, Dr. Smith recommended a right shoulder diagnostic arthroscopy. In answer to a question posed by Claimant's then-counsel in October 2009, Dr. Smith indicated that the need for the surgery was caused by "wear and tear" of the right shoulder and not his industrial accident.

Jeffrey G. Hessing, M.D.

19. Claimant saw Dr. Hessing, a board certified orthopedic surgeon, at ISIF's request on February 4, 2013. Dr. Hessing specializes in shoulders and performed approximately 4500 shoulder surgeries in the past 10 years. He has practiced in Boise since 1985. At the time Dr. Hessing performed his IME, he was partners with Dr. Daines. Dr. Hessing examined Claimant, took his history, reviewed medical records, and reviewed the actual MRI and x-ray films.

20. Dr. Hessing described the surgery performed by Dr. Schwartsman as follows:

> Certainly. He was referred to Dr. Schwartsman because his MRI showed some labral tearing in his shoulder. The labrum is a rim of cartilage that goes around the cup of the shoulder. It deepens the cup and makes it a little concave.
>
> It's just a little a [sic] triangular wedge of cartilage that goes circumferentially around the cup. There was some fraying in that, and Dr. Schwartsman felt that it would help him to trim those back because they can cause popping and pain in the shoulder.
>
> So he underwent arthroscopy of the shoulder on February 13th of 2006, and he did have debridement of his frayed anterior labrum.
>
> He also noted some fraying of the undersurface of the rotator cuff, which is [sic] the tendons that wrap around the ball; and he did smooth those down, as well.
>
> He then performed what is called a subacromial decompression. That is a shaving, a clearing, of calcium deposits and debris from the subacromial space.
>
> The subacromial space is the space that fits right underneath the bony roof of the shoulder, and it's between the bony roof and the top of the rotator cuff. With inflammation, debris and spurs can build up in that space.
>
> So they are cleared out so that they will not irritate the cuff after surgery. That was also performed by Dr. Schwartsman.

Dr. Hessing Deposition, pp. 10-11.

21. Dr. Hessing agreed with Dr. Schwartsman's decision to return Claimant to work without restrictions. He noted Claimant's "falling out" with Dr. Schwartsman.[4] Dr. Hessing also noted that Claimant's post-surgical treatment was interrupted while Claimant was incarcerated at Cottonwood for six months for a felony DUI. Dr. Hessing agreed with Dr. Daines' 30-pound lifting restriction, but attributed the need for the same to arthritis and the wearing of his prosthesis.[5] He did not believe Claimant's accident aggravated his underlying arthritic condition as there is no evidence of damage to the arthritic articular surface and it is much more likely that it was the progressive wear and tear to his shoulder.

22. Dr. Hessing agreed with Dr. Daines that Claimant should not be doing a lot of very heavy lifting with his left upper extremity but any lifting restrictions would be due to his arthritis and not his rotator cuff injury. "Well, rotator cuff tears heal. Unfortunately, arthritis does not." Dr. Hessing Deposition, p. 22. Further, Dr. Schwartsman's finding of full range of motion in 2006 lends support to the proposition that Claimant's current restrictions are due to his arthritis rather than his industrial rotator cuff injury:

> Q. (By Mr. Augustine) According to your report, back in 2006, following surgery, Dr. Schwartsman documented full range of motion. Prior to surgery, he had a limited range of motion, 120 degrees and 10 degrees abduction and flexion.
>
> Does the fact that Dr. Schwartsman documented full range of motion support your opinion regarding the current cause of his range-of-motion difficulties being arthritis, rather than the rotator cuff tear?
>
> A. I believe it does. You know, full range of motion after surgery - - I think he responded well to his decompression and debridement. He was left with a shoulder that still had arthritis in it. It's going to continue to worsen.

[4] Claimant became angry with Dr. Schwartsman on his last visit as he perceived he was made to wait too long to see the doctor.

[5] Dr. Hessing erroneously believed that Claimant had worn the prosthesis for 15 years or so.

> When he still had symptoms and had a little less motion, I think that's related and consistent with an arthritic progression.

Dr. Hessing Deposition, pp. 22-23.

23. Dr. Hessing also opined that Claimant could use his prosthetic arm if he was so motivated.

DISCUSSION AND FURTHER FINDINGS

"Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of impairment and by pertinent non-medical factors provided in Idaho Code §72-430. Idaho Code § 72-425. Idaho Code § 72-430(1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or her age at the time of the accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant, provided that when a scheduled or unscheduled income benefit is paid or payable for the permanent partial or total loss or loss of use of a member or organ of the body no additional benefit shall be payable for disfigurement.

The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant's capacity for gainful employment." *Graybill v. Swift & Company*, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. *Sund v. Gambrel*, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

Odd-Lot:

Claimant does not allege that he is totally and permanently disabled by the 100% method; however, he may still be able to establish such disability via the odd-lot doctrine. An injured worker may prove that he or she is an odd-lot worker in one of three ways 1) by showing he or she has attempted other types of employment without success; 2) by showing that he or she or vocational counselors or employment agencies on his or her behalf have searched for other suitable work and such work is not available; or, 3) by showing that any effort to find suitable employment would be futile. *Hamilton v. Ted Beamis Logging and Construction*, 127 Idaho 221, 224, 899 P.2d 434, 437 (1995).

Idaho Code § 72-332 provides:

> **Payment for second injuries from industrial special indemnity account, --** (1) If an employee who has a permanent physical impairment from any cause or origin, incurs a subsequent disability by an injury or occupational disease arising out of and in the course of his [or her] employment, and by reason of the combined effects of both the pre-existing impairment and the subsequent injury or occupational disease or by reason of the aggravation and acceleration of the pre-existing impairment suffers total and permanent disability, the employer and surety shall be liable for payment of compensation benefits only for the disability caused by the injury or occupational disease, including scheduled and unscheduled permanent disabilities, and the injured employee shall be compensated for the remainder of his income benefits out of the industrial special indemnity account.

> (2) "Permanent physical impairment" is as defined in section 72-422, Idaho Code, provided, however, as used in this section such impairment must be a permanent condition, whether congenital or due to injury or occupational disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining re-employment if the claimant should become unemployed. This shall be interpreted subjectively as to the particular employee involved, however, the mere fact that a claimant is employed at the time of the subsequent injury shall not create a presumption that the pre-existing permanent physical impairment was not of such seriousness as to constitute such hindrance or obstacle to obtaining employment.

There are four elements that must be proven in order to establish liability of ISIF:

1. A pre-existing impairment;

2. The impairment was manifest;

3. The impairment was a subjective hindrance to employment; and,

4. The impairment combines with the industrial accident in causing total disability. *Dumaw v. J.L. Norton Logging*, 118 Idaho 150, 795 P.2d 312 (1990)

Vocational experts

Terry Montague

24. Claimant's former attorney retained Mr. Montague to assist with vocational issues. He has been a vocational rehabilitation consultant since 1989. Mr. Montague prepared an initial report on July 8, 2010. Prior to his July 2010 report's preparation, Mr. Montague had reviewed William Jordan's employability report, interviewed Claimant twice, and reviewed medical and ICRD records. He also reviewed two psychological reports prepared for IDVR. When Claimant was unsuccessful in reaching a settlement, Mr. Montague was asked to prepare a more comprehensive report, which he accomplished on March 7, 2011. In the interim, he again interviewed Claimant.

25. Mr. Montague discussed the methodology he employed in the preparation of his reports:

> Well, first, I wanted to find out what the medical community had issued in terms of restrictions or limitations.
>
> They - - the only work restrictions that had been provided from the medical community were from Dr. Daines, and Dr. Daines had essentially indicated the Mr. Laughlin should be restricted from overhead and outreach work and from work that required lifting greater than 20 pounds with his right upper extremity.
>
> I then took a job history and an educational history of Mr. Laughlin to identify what his preinjury jobs had been to do a transferrable skills analysis.
>
> I found that Mr. Laughlin had only performed unskilled and semiskilled work. I noted that he had a number of psychological diagnoses that were problematic. He had some vocational testing done, which denoted what his reading, language, and math aptitudes were. I noted those.
>
> I noted that he had been involved in a motor vehicle accident in which he ended up losing his left upper extremity just above the shoulder [sic]. He worked with the Division of Vocational Rehabilitation in an attempt to try and have some retraining identified.
>
> He was interested at that time in doing some type of small engine repair work, mechanical work, but he was also in the process of trying to get a prosthesis that would allow him to do that.
>
> I noted that Mr. Laughlin had had some other non-medical factors associated with his case that were problematic from a professional perspective. He has been arrested a number of times. He was a convicted felon. He's been in alcohol treatment, had a substance abuse problem.
>
> His employment history was very sporadic. Most of the jobs he has held were short in duration. He had several gaps in between his employment.
>
> When everything is considered, I did not think that Mr. Laughlin was capable of competing in the open labor market and securing gainful activity.

Mr. Montague Deposition, pp. 12-14.

26. In his July 2010 report, Mr. Montague concluded that Claimant suffered whole person PPD of between 60 and 100% when considering Dr. Daines' restrictions and pertinent nonmedical factors. In his March 7, 2011 report, Mr. Montague opined that Claimant was an odd-lot worker. Mr. Montague admitted that if the causation opinions of

Drs. Smith, Schwartsman, and Hessing were accepted, Claimant would not be totally and permanently disabled.

27. Mr. Montague testified regarding why he only utilized Dr. Daines' restrictions:

> Well, first of all, we look to the medical community to give us guidance in terms of what a person can and cannot do in terms of physical activity. In this particular case, Dr. Daines had also been asked to do an independent medical evaluation on Mr. Laughlin and to determine an impairment rating, which he did.
>
> In addition to giving him an impairment rating of, I believe it was, 6 percent whole person, he noted that he had permanent work restrictions as a -- as a result of his industrial injury of '06, and he listed those.
>
> And that's what I used when I did a transferrable skills analysis to include or exclude occupations.

Mr. Montague Deposition, p. 23.

28. On cross-examination, Mr. Montague offered the following explanation regarding the disparities between his two reports:

> Q. (By Mr. Augustine) The reason I ask is because your opinions change as to the extent of Mr. Laughlin's disability between the two reports.
>
> Is that correct?
>
> A. I don't believe so. I think in both reports, I indicate that he's going to be an odd-lot worker.
>
> Q. Well, let's take a look at that.
>
> Where do you say in your first report that you use the term "odd lot"?
>
> A. I stand corrected. I didn't say that.
>
> Q. So a person with a 60 percent disability in excess of impairment of, I believe, 6 percent of the upper extremity is not odd lot automatically.
>
> Is that right?
>
> A. That would be correct, yes.
>
> Q. So in your first report, you did not indicate that it was your opinion that Mr. Laughlin was odd lot total perm disability.
>
> Is that correct?

A. In my first report, I indicated that his disability in excess of impairment could range from a low of 60 to a high of 100 percent.

Q. Right. But you did not mention anywhere in this report that in your opinion, based upon that range of disability, that he was odd lot total - - totally and permanently disabled, did you?

A. No.

Mr. Montague Deposition, pp. 37-38.

29. Mr. Montague testified that the reason Dr. Schwartsman released Claimant to return to work without permanent restrictions was because Dr. Schwartsman had a falling out with Claimant. The Referee finds no basis in the record to support Mr. Montague's unsubstantiated conclusion in this regard or that such a conclusion provided Mr. Montague with a valid reason to choose Dr. Daines' opinions over those of Drs. Schwartsman, Hessing, and Smith.

William C. Jordan

30. ISIF retained Mr. Jordan to assist them with vocational issues. Mr. Jordan's credentials are well known to the Commission and he is qualified to give expert opinions. Mr. Jordan interviewed Claimant and reviewed his work, wage, and medical histories and personally met with Drs. Schwartsman and Daines regarding their approval/non-approval of certain jobsite evaluations. Mr. Jordan authored three reports concerning Claimant's employability.

31. Mr. Jordan opined that there are jobs Claimant could perform that would return him to his pre-injury part-time employment. A complicating factor is that Claimant is now on SSI that brings him more monthly income than he had pre-injury which may impact his motivation to return to the work force.

32. Finally, when considering Dr. Hessing's opinions, Claimant would have no disability due to his industrial accident and, therefore, no combination of pre-existing conditions and his industrial accident.

33. The Referee finds that the opinions of Dr. Hessing, and concurred in by Drs. Schwartsman and Smith, regarding causation are convincing and persuasive. Claimant's industrially related rotator cuff tear healed and the restrictions imposed by Dr. Daines are more than likely for his underlying arthritic condition which was not permanently aggravated by his industrial accident. Dr. Hessing explained in detail the reasoning behind his causation opinion; Dr. Daines did not. Claimant's own treating physician, Dr. Schwartsman, released Claimant to return to work without restrictions (his falling-out with Claimant aside). Mr. Jordan credibly testified that even when considering Dr. Daines' restrictions,[6] Claimant still has employment opportunities available to him and is not an odd-lot worker.

CONCLUSIONS OF LAW

1. Claimant has failed to prove he is totally and permanently disabled.

2. The Complaint against ISIF should be dismissed with prejudice.

[6] Mr. Jordan testified that unless a vocational expert considers all physicians' opinions regarding restrictions, that expert becomes an advocate for his or her position regarding disability.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this __12th____ day of August, 2014.

INDUSTRIAL COMMISSION

_/s/_____
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the __18th___ day of August, 2014, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

SAM JOHNSON
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PAUL J AUGUSTINE
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ge Gina Espinosa

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DONALD LAUGHLIN, Claimant, v. STATE OF IDAHO INDUSTRIAL SPECIAL INDEMNITY FUND, Defendant.	**IC 2006-000620** **ORDER** **Filed August 18, 2014**

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove he is totally and permanently disabled.

2. The Complaint against ISIF is dismissed with prejudice.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __18th___ day of ___August___, 2014.

INDUSTRIAL COMMISSION

__/s/_____
Thomas P. Baskin, Chairman

__/s/_____
R. D. Maynard, Commissioner

__/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __18th___ day of __August___ 2014, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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ge ___/s/_____